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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM, 1978

NO. 78-5693

DANIEL ROSS, Petitioner,

v.

KAYE BYRD, individually and in her person and official capacity as Case Analyst of the State of North Carolina Parole Commission; JAMES G. WOODARD, individually and in his person and official capacity as Chairman of the State of North Carolina Parole Commission, Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AT RICHMOND NO. 78-6373 (Formerly Misc. NO. 78-8296)

DANIEL ROSS, Pro se
Franklin County Prison
Post Office Box 155
Bunn, North Carolina 27508

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IN THE

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_____ TERM, 1978

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NO. _____

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SUPREME COURT, U.S.

DANIEL ROSS, 78-5693 PETITIONER,

v.

KAYE BYRD, individually and in her person and official capacity as Case Analyst of the State of North Carolina Parole Commission; JAMES C. WOODARD, individually and in his person and official capacity as Chairman of the State of North Carolina Parole Commission, Respondents.

_____

DECLARATION TO SUE AS A PAUPERIS

_____

I, DANIEL ROSS, declare under the penality of perjury that I am the Petitioner in this matter and have a good cause of action against the respondents and desire to bring such action in this Court; that I am unable to give bond or make the deposit required by law to enable me to begin said action. That I am unemployed. The date of last employment was two years ago. That I have not received with the post twelve months any money from any of the following sources: business, profession or from self-employment; rent payments, interest or dividends; pensions, annuties or life insurance payments; gifts or inheritance, or any other sources. That I do not own any cash, or have money in a checking or saving account. That I do not own any cash, or have money in a checking or saving account. That I own no real estate, stocks, bonds, notes, automobiles, or other valuable property. That this cause of action has been properly exhausted in the courts below.

WHEREFORE, petitioner prays the Court that an order may issue forthwith allowing him to bring said action as a pauper without laches. This the 4th day of November, 1978

_____ -

DANIEL ROSS, pro se

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DANIEL ROSS, Petitioner,

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KAYE BYRD, individually and in her person and official capacity as Case Analyst of the State of North Carolina Parole Commission; JAMES C. WOODARD, individually and in his person and official capacity as Chairman of the State of North Carolina Parole Commission, Respondents.

PETITION FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT AT RICHMOND
NO. 78-6373 (Formerly Misc. NO. 78-8296)

PetitionerDaniel Ross, a state prisoner, respectfully prays that writs of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on October 16, 1978, and that this Honorable Court will treat the pro se petition to less strengent standards than formal pleadings drafted by lawyers because the petitioner lack the legal expertise including access to facilities to extent as lawyers. No appendix is attached due to petitioner's indigency and lack of a copying machine at the present place of confinement, the Franklin County Prison Unit Law Library to redress this Honorable Court.

OPINION BELOW

On October 16, 1978, the United States Court of Appeals for the Fourth Circuit for the reasons stated in the United States District Court's order dated July 6, 1978 affirmed said order filed July 7, 1978 sua sponte dismissing the complaint in Ross v. Byrd, et al., C/A NO. 78-0172 (E.D. N. C., July 7,1978).

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on October 16, 1978, and this petition for certiorari was fined within 90 days of that date. This Court's jurisdiction is invoked under Rules 12(3), Rule 19 and 28 USC 1651(a).

QUESTION PRESENTED

HAS THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT RENDERED A DECISION IN FRANKLIN v. SHIELDS, __F.2d __(1978) AS OPPOSED TO JULY 7, 1978 to wit ROSS v. BYRD, NO. 78-317-CRT (E.D.N.C.) AND IN CONFLICT WITH THE DECISION OF THE SECOND, SEVENTH, EIGHTH AND D. C. COURT OF APPEALS ON THE SAME MATTER; OR HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT. IF SO, DOES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT HAVE ANY APPLICATION TO THE CONDUCT OF PROCEEDING BY A PAROLE BOARD IN STATES WHERE PAROLE IS NOT MANDATORY BUT IS GUARANTEED TO EVERY PRISONER A REVIEW AND CONSIDERATION OF HIS CASE UPON ITS MERITS AND THE PRISONER DESIRING ACCESS TO THE INFORMATION IN HIS PAROLE FILE ASSERTING THAT SOME OF THE FACTS FOUND THEREIN ARE ERRONEOUS, CONSTITUTIONALLY BE DENIED ACCESS AND NOTICE OF INTENTION TO SO CLASSIFY TOGETHER WITH FACTUAL DATA UPON WHICH THE BOARD BELIEVES SUCH CLASSIFICATION APPROPRIATE NO LATER THAN THE IN PRISON INTERVIEW WHEN IT WOULD BE A GRIEVOUS LOSS FOR A PRISONER BY REASON OF A COMPLETELY EX PARTE PROCEEDING, AND THE RESULTING INCREASED OPPORTUNITY FOR COMMITTING ERROR, TO BE DENIED PAROLE AND REQUIRED TO SERVE MORE OF HIS TERM BECAUSE THE ATTENTION OF THE PAROLE BOARD WAS NOT CALLED TO DATA TENDING TO INDICATE THAT PAROLE SHOULD BE GRANTED, OR FOR A PRISONER WHOSE INCARCERATION HAS AS IT ULTIMATE OBJECTIVE THE PRISONER'S REHABILITATION TO FAIL TO KNOW, LET ALONE UNDERSTAND, WHY PAROLE IS DENIED HIM AND HENCE WHAT CHANGES IN ATTITUDES, HABITS, AND THE LIKE WILL BE REQUIRED IF HE IS EVER TO BE SUCCESSFUL IN OBTAINING PAROLE, UNLESS, OF COURSE, THERE IS FOUND TO BE SOME COMPELLING STATE INTEREST IN WHY HE SHOULD NOT BE ADVISED?

STATEMENT OF THE CASE

Petitioner Daniel Ross, filed a civil rights action in the United States District Court for the Eastern District of North Carolina, seeking monetary relief together with injunction and a declaration with regard to certain practices and procedures of the North Carolina Parole Board to grant or to deny access to information in his parole file. Jurisdiction was found upon 28 USC 1343(3),(4) and 42 USC 1983. The petitioner asked the district court to mandatorily prohibit, via injunction, the respondents, Kaye Byrd, among the North Carolina Parole Board, from similar acts and omissions in order to deter respondent from, in the future, refusing an failing to furnish access to information in parole files no later than his in prison interview in August, 1978, and; an opportunity to explain or rebut evidence and to present an affirmative case in order that he might receive every possible consideration of parole - was fatal since the state had created the right to consideration of parole, the deprivation of that right may well be a grievous loss. That anything less, makes the review no more than a sham when by reason of a completely ex parte proceeding, and the resulting increased opportunity for committing error, to be denied parole and required to serve more of his term because the attention of the Parole Board was not called to data tending to indicate that parole should be granted, or for a prisoner whose objective incarceration has as its ultimate objective the prisoner's rehabilitation to fail to know, let alone understand, why parole is denied him and hence what changes in attituded, habits, and the like will be required if he is ever to be successful in obtaining parole, unless, of course, there is found to be some compelling state interest in why he should not be advised.

Petitioner made no claim that he was entited to immediate release. Nor did he claim that he has a right to parole so that he would be released prior to the full service of his sentence less whatever credits the State of North Carolina may grant him. Petitioner makes no claim that he has the right to inquire into the internal functioning of the parole board or the adjudicatory processes by which paroles are granted or denied. The sole thrust of petitioner's complaint is a constitutional attack upon the procedures of the respective parole board. The substantive question is not the right to parole but the right to procedural due process in the consideration of parole. Despite this important constitutional question, on July 7, 1978, the district court dismissed the complaint sua sponte holding that an en banc Fourth Circuit having held that there is no constitutional right of access to the information in petitioner's parole file, Franklin v. Shields, __F2d __ (1978), which order was affirmed on October 16, 1978 by the United States Court of Appeals for the Fourth Circuit for the reasons stated in Ross v. Byrd, NO. 78-317-CRT (E.D. N.C. July 7, 1978)

CONSTITUTIONAL PROVISION INVOLVED

1. ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law. . . ."

2. " 148-58. Time of eligibility of prisoners to have cases considered. *** All prisoners shall be eligible to have their cases considered for parole when they have served a Fourth of their sentence, if their sentence is determinate, and a Fourth of their minimum sentence, if their sentence is indetermine; provided, that any prisoner serving sentence for life shall be eligible for such consideration

when he has served 20 years of his sentence, Nothing in this section shall be construed as making mandatory the release of any prisoner on parole, but shall be construed as only guaranteeing to every prisoner a review and consideration of his case upon its merits. (1935, c. 414, s. 8; 1955, c. 867, s. 5; 1973, c. 1201, s. 5). At all times relevant hereto, NORTH CAROLINA GENERAL STATUTES 148-58 has been fully operative.

REASONS FOR GRANTING THE WRITS

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT HAS RENDERED A DECISION IN FRANKLIN v. SHIELDS, __F2d __(1978) AS OPPOSED TO JULY 7, 1978 TO WIT ROSS v. BYRD, NO. 78-317- CRT (E.D.N.C.) AND IN CONFLICT WITH THE DECISION OF THE SECOND, SEVENTH, EIGHTH AND D. C. COURT OF APPEAIS ON THE SAME MATTER; OR HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT. THE DEDISION BELOW IS ERRONEOUS IN THAT THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT HAVE SOME APPLICATION TO THE CONDUCT OF PROCEEDING BY A PAROLE BOARD IN STATES WHERE PAROLE IS NOT MANDATORY BUT IS GUARANTEED TO EVERY PRISONER A REVIEW AND CONSIDERATION OF HIS CASE UPON ITS MERITS AND THE PRISONER DESIRING ACCESS TO THE INFORMATION IN HIS PAROLE FILE ASSERTING THAT SOME OF THE FACTS FOUND THEREIN ARE ERRONEOUS, CANNOT CONSTITUTIONALLY BE DENIED ACCESS AND NOTICE OF INTENTION TO SO CIASSIFY TOGETHER WITH FACTUAL DATA UPON WHICH THE BOARD BELIEVES SUCH CLASSIFICATION APPROPRIATE NO LATER THAN THE IN PRISON INTERVIEW WHEN IT WOULD BE A GRIEVOUS LOSS FOR A PRISONER BY REASON OF A COMPLETELY EX PARTE PROCEEDING, AND THE RESULTING INCREASED OPPORTUNITY FOR COMMITTING ERROR, TO BE DENIED PAROLE AND REQUIRED TO SERVE MORE OF HIS TERM BECAUSE THE ATTENTION OF THE PAROLE BOARD WAS

NOT CALLED TO DATA TENDING TO INDICATE THAT PAROLE SHOULD BE GRANTED, OR FOR A PRISONER WHOSE INCARCERATION HAS AS IT ULTIMATE OBJECTIVE THE PRISONER'S REHABILITATION TO FAIL TO KNOW, LET ALONE UNDERSTAND, WHY PAROLE IS DENIED HIM AND HENCE WHAT CHANGES IN ATTITUDES, HABITS, AND THE LIKE WILL BE REQUIRED IF HE IS EVER TO BE SUCCESSFUL IN OBTAINING PAROLE, UNLESS, OR COURSE, THERE IS FOUND TO BE SOME COMPELLING STATE INTEREST IN WHY HE SHOULD NOT BE ADVISED. The first significant case holding that due process attached to parole hearings was Childs v. United States Board of Parole, 511 F2d 1270 (D. C. CA. 1974), where the court stated:

> "THE BOARD HOLDS THE KEY TO THE LOCK OF THE PRISON. IT POSSESSES THE POWER TO GRANT OR TO DENY CONDITIONAL LIBERTY . . . THE RESULT OF THE BOARD'S EXERCISE OF ITS DISCRETION IS THAT AN APPLICANT EITHER SUFFERS A 'GRIEVOUS LOSS' OR GAINS A CONDITIONAL LIBERTY. HIS INTEREST ACCORDINGLY IS SUBSTANTIAL. WE THINK IT FOLLOWS THAT THE PAROLE DECISION MUST BE GUIDED BY MINIMAL STANDARDS OF DUE PROCESS OF LAW. . . . "

Since Childs, most courts faced with the issue have held that a prisoner is entitled to some due process safeguards in the parole hearing stage. The particularly due process protections discussed by the courts unually involve (1) meaningful reasons for the denial of parole, (2) access by the prisoner to his or her files or to information to be considered by the board and an opportunity to rebut erroneous information, (3) comprehensive explanatory guideliness for prisoners with respect to the rules and procedures, (4) representation by counsel or an advisor and; (5) an opportunity for the prisoner to present an affirmative case for parole; e.g., See United States ex rel. Johnson v. Chairman, 500 F2d 953 (CA2 1974); vacated as moot, 419 US 1015 (1974); Childs v. U. S. Board of Parole, supra; King v. United States, 492 F2d 13137 (CA7 1974); Birdwell v. Ciccone, 490 F2d 310 (CA8 1973).

The importance of this due process safeguard was amplified in Cooley v. Sigler, 381 F Supp 441 (D. Minn. 1974), the court held that, as a general rule, due process requires that a parole applicant be given access to the information and files which are to be considered by the Board in ruling on parole. This dedision was based on the court's concern that files can contain erroneous information which, unless prisoner have an opportunity to review it, can be used to deny him parole. And the Grattan v. Sigler, 525 F2d 329 (CA9 1975) court held that the prisoner must be given data upon which reclassification of offense severity rating is based prior to hearing and afforded opportunity to explain or rebut evidence. The rationale that a parole applicant be given access to the information and files are based on the trend that most prisons prepare progress reports on prisoners to be submitted to the Parole Board wherein the prisoner's activities within the prison and detailed, e. g., jobs, attitudes, disciplinary reports and participation in various prison programs. Also included in those reports are criminal records, past convictions, family ties, martial status, employment records, etc. Generally case workers prepare those reports based upon information contained in prisoner's central file. Prior to submission of reports to the parole board in the Federal System, the prisoner is supposed to sign it, showing that he has read and agree with the contents thereof, to ascertain it accuracy. If the prisoner find mistakes or erroneous information in his in his parole file he can call it to the attention of the caseworker or other person preparing his report so he can correct it. Cf. Robinson v. United States Board of Parole, 403 F Supp 638 (W.D.N.Y. 1975); Kohlman v. Norton, 380 F Supp 1073, 1075 (D. Conn. 1974) (Both of those dealt with erroneous information in parole file and required new hearings because of it.

However, it the Spring of 1976 Congress enacted into law the "Parole Commission andReorganization Act." 18 USC s/s/4201 et seq. (90 Stat. 219, Pub. L. 94-233). Under this new Act are many rights which represent, for the most part, a codification of many federal court decisions. For example, See Title 18 United States Code Section 4208. n) you are not entitled, under the Act, to have access to diagnostic opinion which, if made known to you, could lead to a serious disruption of the prison program, any document which reveals sources of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to any person. If the Commission or the Bureau of Prisons denies you access to any type of information listed above, however, it must at least provide you with a summary of the basic contents of the material withheld and furnish you with a copy of the summaries before your parole hearing, p) a full and complete record of every proceeding must be kept by the Commission and upon request the Commission must make this record available to you; and q) if you are denied parole a conference is set up between you and the Commission, or the examiners thereof, to explain the reasons why you were denied. This conference include advice to you as to what steps you might take to enhance your chances of making parole at your next hearing, 18 USC 4208. Unlike the Federal Parole System the State of North Carolina Parole System does not provide caseworkers but instead, case analysts. Prior to submission of pregress reports to the North Carolina Parole Board in the State prison system, the poor prisoner is not shown reports based upon information contained in his central file. He is not given the opportunity to read and agree with the contents thereo

If there be mistakes or erroneous information in his parole file he cannot call it to the attention of the case analyst or other person preparing his report so he can correct it. He is not provided with a summary withheld, or furnished with a copy of the summaries before his parole hearing. Cf. 18 USC 4208. There is no available remedy to request a full and complete record of every proceeding and the North Carolina Parole Board does not make these available to its prisoners. If you are denied parole no conference is setup between you and the Parole Board, or the examiners thereof, to explain the reason why you were denied and no one tell you what steps you might take to enhance your chances of making parole at your next hearing. Infact, the prisoner is not examined.

STATES WHICH HAVE CREATED THE RIGHTS TO CONSIDERATION OF PAROLE MAY NOT DENY THE PRISONER ACCESS TO INFORMATION IN HIS PAROLE FILE BECAUSE THE PRISONER'S INTEREST IS TO HELP HIMSELF PREPARE FOR CONSIDERATION OF PAROLE OR CONTENTION THAT RELATES TO CONSIDERATION OR THE APPLICATION OF FAIRNESS.

Furnishing uncovered facts, documents and relevant information about his parole status that will help him present a complete picture to the board. It would aid the Parole Board to narrow and clarify the issue whether to grant or to deny parole, and be accurate rather than inaccurate, and to discover pertinent facts in making a discriminatory decision as well as an impartial one. Access would substantially lessen, if not, eliminate, much of the element of surpise which no doubt, would turn out long drawn grievances by redressing out courts while simultaneously increasing our prisons' population presumeably on a national scale. Besides it cannot be said with precision that the request for information in a parole file is irrelevant or unreasonble. One of the big advantages of access to information in his parole files is that it allows the parole board to avoid rehearings where remain a possibility that adverse collateral consequences would inure to the board by a court decreeing hearings. This therefore would minimize

attempts of prisoners and ease court actions. Furnishing access effectivaly will let the prisoner know, let alone understand, why parole is denied him and hence what changes in attitudes, habits, and the like will be required if he is ever to be successful in obtaining parole. For example, in Calabro v. United Board of Parole, 525 F2d 660 (Ga5 1975), the court held that factual errors in the parole file are not prejudicial where the prisoner had provided the parole board with his own statement of the factual data at the parole hearing. Manos v. United States Board of Parole, 399 F Supp 1103 (M.D.Pa. 1975), held that if the parole board takes the offense for which the prisoner is in prison into consideration, e. g., if they designate him as an "organized crime" person , he must be informed of this in order to be prepared to refute any erroneous information. And, in Fisher v. United States, 382 F Supp 241 (D. Conn. 1974) , the court held that a prisoner was not entitled to full access to his file although the baord must disclose to the prisoner those adverse facts that detail the ground for the board's discretional decision to deny parole, See also, Rathman v. Director, United States Board of Parole, 403 F Supp 188 (N. D. Ga. 1975).

ACCESS TO INFORMATION IN HIS PAROLE FILE CANNOT BE CONSIDERED OPPRESSIVE OR OBJECTIONABLE SIMPLY BECAUSE THIS MAY CAUSE THE PAROLE BOARD WORK, RESEARCH OR EXPENSE. NOR IS ACCESS OBJECTIONABLE BECAUSE HE SEEK INFORMATION GUARANTEED TO HIM A REVIEW AND CONSIDERATION OF HIS OWN CASE UPON ITS MERITS.

Executive privilege is disproportionate and unreasonable justifications for denying the prisoner access to information in his parole file when interest of both the Parole Board and the prisoner is guaranteed review and consideration fully operative by North Carolina General Statutes 148-58. Considering the probability of undue burden or expense by providing prisoners access to information in their parole files, in the absence of fairness, consideration is non-existence. When weighed against the inconvenience to the state, justifies the application of the Fourteenth Amendment. Because reports becomes part of the prisoner's personal files, affecting

numerous classification and parole decisions to be made about him. Indeed, it may follow him throughout prison system. The board holds the key to the lock of the prison. It possesses the power to grant or to deny conditional liberty. The result of the board's exercise of its discretion is that an applicant suffers a grievous loss or gains a conditional liberty. If the board's decision were based on an erroneous description of the conduct underlying an offense as in Kohlan v. Norton, 380 F Supp 1073 (D. Conn. 1974); or on the basis of an illegal disciplinary proceeding as in Leonard v. Missippi Parole Board, 373 F Supp 699 (N.D. Miss 1974) but which the prisoner is denied access to information in his file and, an opportunity to rebut evidence erroneous. He is denied parole anew each time his record is used against him. See Bradford v. Weinstein, 519 F2d 728 (4th Cir. 1974), vacated as moot, 423 US 147 (1975) that must be preceeded by due process Scott v. Kentucky Parole Board, 197 S Ct 342 (1976).

North Carolina Parole Criteria 5 NC AC 4C Policy, Review and Investigation .1606.

The commission, however, does reserve the right to review disciplinary actions and put its own evaluation on the seriousness of the infraction as this relates to parole consideration.

CONCLUSION

Petitioner, Daniel Ross, submits that the Franklin v. Shields' case unlike the Ross v. Byrd's case, while somewhat analogus, is inapposite, but in any event, an important question of Federal Law which has not been, but should be, settled by this Court since in conflict with the decision of the Second, Seventh, Eighth and D. C. Circuit Court of Appeals. Accordingly, this Honorable Court Ex Mero Motu, should so declare, and decide the important federal question.

Respectfully submitted,

DANIEL ROSS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing PETITION FOR WRITS OF CERTIORARI was deposited in the United States Mail postage prepaid, addressed to Honorable Rufus L. Edmisten, Attorney General for the State of North Carolina and Honorable Jacob L. Safron, Special Deputy Attorney General Department of Justice Post Office Box 629 Raleigh, North Carolina 27602.

DANIEL ROSS, Pro se

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 78-6449

(Formerly Misc. No. 78-8296)

Daniel Ross,

Appellant,

v.

Kaye Byrd, individually and in her person and official capacity as Case Analyst of the State of North Carolina Parole Commission; James C. Woodard, individually and in his person and official capacity as Chairman of the State of North Carolina Parole Commission,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. F. T. Dupree, Jr., District Judge.

Submitted: September 21, 1978 Decided: October 16, 1978

Before FIELD, Senior Circuit Judge, WIDENER and HALL, Circuit Judges.

(Daniel Ross, Appellant Pro Se; Richard N. League, Assistant Attorney General, counsel for the Appellees.)

PER CURIAM:

A review of the record and of the district court's opinion discloses that this appeal from the order of the district court denying relief under 42 U.S.C. § 1983 is without merit. Accordingly, although leave to proceed in forma pauperis is granted, the order is affirmed for the reasons stated by the district court. Ross v. Byrd, No. 78-317-CRT (E.D.N.C., July 7, 1978).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

FILED
JUL 7 1978
JOHN R. WHITTY, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

DANIEL ROSS,

Plaintiff

VS.

KAYE BYRD, etc., THE STATE OF NORTH CAROLINA PAROLE COMMISSION, etc., et al.,

Defendants

NO. 78-317-CRT

O R D E R

Plaintiff in this civil rights action desires access to the information in his parole file, asserting that some of the facts found therein are erroneous. An en banc Fourth Circuit having held that there is no constitutional right to such information, Franklin v. Shields, ___ F.2d ____ (1978), the complaint fails to state a claim.

Accordingly, the motion to proceed in forma pauperis is allowed but the action is dismissed.

/s/ F. T. Dupree, Jr.

F. T. DUPREE, JR.
UNITED STATES DISTRICT JUDGE

July 6, 1978.

A True Copy, Test:
John R. Whitty, Clerk
By Dawn S. Williams
Deputy Clerk